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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|-----------------------------|------------------|
| 09/655,131 | 09/05/2000 | Maurice Clarence Kemp | MORN-0006 (108347.00017) | 7549 |

7590 11/06/2002

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EXAMINER

PAK, JOHN D

ART UNIT PAPER NUMBER

1616

DATE MAILED: 11/06/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|--------------|
| Office Action Summary | Application N . | Applicant(s) |
| | 09/655,131 | KEMP ET AL. |
| Examiner | Art Unit | |
| JOHN D PAK | 1616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 August 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-58 is/are pending in the application.

4a) Of the above claim(s) 2,4-9 and 12-58 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3,10 and 11 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

4) Interview Summary (PTO-413) Paper No(s). _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

Claims 1-58 are pending in this application.

Applicant's election without traverse of Group I, wherein the single disclosed species (i) is Mg or Zn, (ii) is lactic acid, and (iii) is sulfuric acid anion. It is noted that election of (i) actually contains two species. For examination purposes, the first species, Mg, will be accepted in Paper No. 6 (8/6/02) is acknowledged.

Claims 2, 4-9 and 12-58 are accordingly withdrawn from further consideration as being directed to non-elected subject matter. Claims 1, 3 and 10-11 will presently be examined to the extent that they read on the elected subject matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/48469.

WO 00/48469 explicitly discloses an acidic composition containing Group IIA metal, lactic acid and sulfuric acid anion. See page 10, lines 24-32; page 13, lines 4-9; claims 1-2, 4-6. less corrosive activity is disclosed (claim 4). Highly acidic pH and concentration is disclosed (page 13, lines 4-9).

While better biocidal activity than a comparative organic acid + metal salt of organic acid is not explicitly disclosed for Mg containing acidic composition in the prior

art, the prior art composition also contains the sulfuric acid anion—therefore similar comparative activity must be present.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention and the claimed invention as a whole have been fairly suggested by the teachings of the cited reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pak whose telephone number is 703-308-4538. The examiner can normally be reached on Monday-Thursday 8 am-5:30 pm; alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



JOHN PAK
PRIMARY EXAMINER
GROUP 1000

Pak:mv
October 25, 2002

DOCKET No.:



USPTO
PATENT & TRADEMARK OFFICE
(10834700017)

7-5-02

GP1751

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PATENT
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TECHNOLOGY CENTER

1600/2900
5/Prior
Art w/att

Bet
7-24-02

Applicant: Maurice C. Kemp, et al.

Serial No.: 09/655,131

Filed: September 5, 2000

Group: 1751

For: HIGHLY ACIDIC METALATED ORGANIC ACID

Commissioner of Patents
Washington, D. C. 20231

Sir:

EXPRESS MAIL NO. EV 060146475 US

DATE OF DEPOSIT: JULY 2, 2002

**TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT WITHIN THREE
MONTHS OF FILING OR BEFORE MAILING OF FIRST OFFICE ACTION**

The information disclosure statement submitted herewith is being filed within three months of the filing date of the application or date of entry into the national stage of an international application or before the mailing date of a first Office Action on the merits, which ever event occurs last. 37 C.F.R. § 1.97(b).

Respectfully submitted,
JACKSON WALKER L.L.P.

T. Ling Chwang
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Registration No. 33,590

Dated: July 2, 2002

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